



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2017 Biennium

Bill #	HB0290	Title:	Maximize information integrity in government actions
Primary Sponsor:	White, Kerry	Status:	As Introduced

- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> Significant Local Gov Impact | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>	<u>FY 2018 Difference</u>	<u>FY 2019 Difference</u>
Expenditures:				
General Fund	\$611,784	\$568,745	\$572,750	\$576,755
State Special Revenue	\$25,464	\$24,503	\$24,811	\$25,183
Federal Special Revenue	\$173,185	\$136,938	\$138,992	\$141,077
Common Schls Perm Fund (09)	\$0	\$0	\$0	\$0
Other	\$93,492	\$90,592	\$91,951	\$93,330
Revenue:				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$8,069	\$7,902	\$8,021	\$8,141
Federal Special Revenue	\$0	\$0	\$0	\$0
Common Schls Perm Fund (09)	(\$8,069)	(\$7,902)	(\$8,021)	(\$8,141)
Other	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>(\$611,784)</u>	<u>(\$568,745)</u>	<u>(\$572,750)</u>	<u>(\$576,755)</u>

Description of fiscal impact: HB 290 requires the Department of Administration to develop and issue guidelines that provide policy and procedural guidance to state agencies for ensuring and maximizing the quality, objectivity, utility, and integrity, including statistical integrity, of information disseminated and used by state agencies as a qualitative or quantitative basis for taking a government act. A "government act" as defined in 2-11-103, MCA, means the denial or issuance with conditions of a permit, certificate, license, or the equivalent of a permit, certificate, or license issued by a government entity. The fiscal impact to the general fund is approximately \$1.2 million in the 2017 biennium for agencies that could determine a cost. Several agencies were not able to quantify a fiscal impact.

FISCAL ANALYSIS

Department of Administration (DOA)

1. HB 290 would require the DOA to develop and issue guidelines that provide policy and procedural guidance to state agencies for ensuring and maximizing the quality, objectivity, utility, and integrity, including statistical integrity, of information disseminated and used by state agencies as a qualitative or quantitative basis for taking a government act. The DOR would also be required to report annually to the state administration and veterans' affairs interim committee.
2. A "government act" as defined in 2-11-103, MCA, means "the denial or issuance with conditions of a permit, certificate, license, or the equivalent of a permit, certificate, or license issued by a government entity."
3. The DOA would require 1.00 FTE to establish policies and procedures, monitor DOA processes, and compile data for annual statewide reporting.
4. Salary and benefits for 1.00 Administrative Specialist FTE would total \$84,592 in each year of the 2017 biennium. Personal services have been inflated 1.5% per year in each year of the 2019 biennium.
5. It is estimated that operating costs would be approximately \$6,000 per year. The first year would be \$2,900 higher to include office setup and a computer (\$1,600 + \$1,300).
6. The position would be added to the director's office internal service fund rates and would be included in fixed costs to department programs beginning in the 2019 biennium.

Department of Natural Resources and Conservation (DNRC)

Trust Land Management Division (TLMD):

7. HB 290 will impact the Montana Environmental Policy Act (MEPA) analysis process of TLMD by creating additional guidelines for analysis and disputes of the analysis. The Trust Land Management Division of the DNRC averages 228 MEPA documents a year. MEPA documents are produced in each of the four division programs: Agriculture and Grazing, Minerals Management, Forest Management and Real Estate Management. Real estate and Forest Management have the most MEPA analyses of the division.
8. For fiscal note purposes, it is assumed that under Section 3 of the bill, TLMD would experience frequent disputes in analyses. These disputes would increase workload in all trust land programs, but primarily in the real estate and forest management programs.
9. For the forest management program, it is assumed that any disputes that arise would be associated with timber permits and timber sales. Additional staff time would be needed to address disputes, defend studies and data used in MEPA analyses, and add more time to complete future MEPA analyses including time for specialists, planners, and foresters. For fiscal note purposes, it is assumed the bill would add 60 to 90 days of additional process to many projects, which extends the timelines for completion of timber sales and timber permits. Additional processing and analysis would increase the documentation and associated reporting. In the event of a contested case hearing, projects could be delayed. Project delays have the potential to impact the forest management program's annual sustained yield target for timber harvest and therefore, the ability to generate revenues for the trust beneficiaries.
10. For the real estate management program, it is assumed that disputes would arise on leasing and licensing actions, land banking sales, and land exchanges. Additional staff time would be needed to address disputes, defend studies and data used in MEPA analyses, and add more time to complete future MEPA analyses including time for specialists, planners, and field staff. For fiscal note purposes, it is assumed that the bill would add 60 to 90 days of additional process to many projects, which extends the timelines for completion of leases, licenses, land sales and land exchanges. Additional processing and analysis would increase the documentation and associated reporting. In the event of a contested case hearing, projects could be delayed. Project delays have the potential to impact the Real Estate Management Bureau's annual work plans, therefore, the ability to generate revenues for the trust beneficiaries.

11. TLMD would require 1.00 FTE conservation specialist for the real estate program and 1.00 FTE conservation specialist for the forest management program to address the work load created by HB 290 requirements. The duties of the new FTE would include: drafting and adopting rules in compliance with the statute; completing the reporting requirements with the DOA; coordinating with bureau and area office specialists to provide written responses when requests from citizens are filed; and participate and coordinate hearing processes with the DNRC hearing unit as needed (see Assumption 22).
 - a. Costs include personal services and benefits for two new FTE of \$151,610 for FY 2016. Operations costs in the first year include one-time-only costs of office packages and computers of \$5,800 and additional costs of \$20,000 each year (\$10,000 per FTE) for travel, training, communications, office supplies, transportation, etc. A 1.5% inflation factor has been applied to costs beginning in the 2019 biennium.
12. Costs will be paid from the TLMD primary funding source, the trust administration state special revenue (SSR) account. This account is funded by a portion of the revenue generated by land management activities from the trust beneficiaries' distributable revenue stream. An increase in the trust administration account expenses represents a reduction in the distributable revenue stream for the trust beneficiaries. The costs for fiscal note purposes were allocated based on surface acres for the trusts, including common schools, the university system (Montana State University, Montana Tech, the State Normal School [Eastern and Western], University of Montana), other trusts (School for the Deaf and Blind, State Reform School – Pine Hills), and the Public Buildings trust.
13. Reductions to the common schools distributable revenue due to administrative costs are allocated 95% to the state special revenue guarantee account and 5% to the common schools permanent fund.
14. Reductions to the common schools state special revenue guarantee account must be offset with a reduction to general fund expenditures for K-12 BASE aid expenditures that are not funded by the guarantee account.
15. The permanent fund generates interest for the trust beneficiaries. Interest for the Common Schools trust is distributed 95% to the common schools guarantee account annually with 5% reinvested in the permanent fund. Interest on the common schools permanent fund is forecast at a rate of 3.70% for FY 2016, 3.50% for FY 2017, 3.30% for FY 2018, and 3.10% for FY 2019. Interest rates were provided by the Board of Investments, whose responsibility it is to manage the trust and legacy fund. Reductions in the deposits to the common schools permanent fund reduce interest in the fund and distributable interest to the trust.

Water Resources Division (WRD):

16. All forms listed under ARM 36-12-102 and 36-2-103, for which a fee is collected, will potentially be affected by changed in HB 290. Requests could be made for statements of qualitative or quantitative data on any of these forms.
17. A request for a statement will be made on approximately 5% of the 10,235 forms per year, or 511 forms.
18. Time spent drafting and completing requested statements would require an additional 0.50 FTE water conservation specialist at a cost of \$37,330 in FY 2016.
19. Operating expenditures for this FTE would include the standard operating expenses of \$2,875 in FY 2016 which includes an office package, computer, communication services, and supplies and materials.
20. An inflation factor of 1.5% for FY 2018 and FY 2019 has been added.

Director's Office:

21. DNRC assumes the increase in contested case hearings that would need to be conducted under Section 3 would result in the need for a hearings unit within the Director's Office/Legal Unit to manage hearing activities across DNRC divisions.
22. The Legal Unit would require 1.50 FTE hearing officers for oversight and coordination of DNRC hearing activities across divisions costing \$118,729 for salaries and benefits.
23. The Legal Unit would also require an additional 1.00 FTE legal secretary to support the hearing officers costing \$33,884 salaries and benefits.
24. The Director's Office/Office of Information Technology would require 0.50 FTE programmer to track and manage additional data that would need to be maintained on Water Resources Division and Trust Land

Management Division database applications to comply with the requirements of Section 2 in relation to contested case hearings. The salary and benefits cost of this position would be \$76,381

25. Operating expenditures for these four people would include the standard operating expenses of \$11,500 in FY 2016 which includes an office packages, computers, communication services, and supplies and materials.
26. An inflation factor of 1.5% for FY 2018, and FY 2019 has been added.

Governor's Office

27. The Governor's Office would hire a private contractor to assess the practices currently in place and to assist in developing new rules of procedures tailored to the office which satisfy the requirements of HB 290. It is estimated that this would cost \$5,000 in consulting fees.
28. Section 2 states that a government entity shall, upon request, provide statements of the information relied upon to take government actions. There is the potential that these requests would require the agency to commit more employee time and resources to provide this information in the manner and time required by the bill. Current workloads of existing staff would not permit them to produce the information required by the bill within their regular assigned work hours. Compensatory time and overtime would be paid to staff for time compiling and providing these statements. An average annual cost for personal services is assumed at \$15,000 per year.
29. A contested case under the provisions of the Montana Administrative Procedure Act (MAPA) can cost around \$5,000 in staff or consultants time and materials. It is assumed that the office would hire experts in the related fields to address each dispute. Assuming that on an annual basis the agency receives two disputes over the quality, objectivity, utility, or integrity of the information used as a basis for a government act, the cost of defending and answering to the disputes would be \$10,000.

Department of Environmental Quality (DEQ)

30. HB 290 requires the DEQ to adopt rules. Adoption of the rules would require publication of a notice of proposed rulemaking and a notice of adoption in the Montana Administrative Register.
31. The notices would in the aggregate be 10 pages long and the DEQ would be required to pay the Secretary of State a fee of \$500 for publication of the notices in the Montana Administrative Register.
32. The contested case appeal provision of HB 290 is available to an applicant for a permit, license, or certificate who wishes to dispute the conditioning or denial of a permit and to any person who disputes the issuance of a permit, license, or certificate with conditions.
33. The department estimates it would receive three contested case appeals per year under Section 3 of HB 290.
34. The DEQ would appoint a hearing examiner from the Agency Legal Services Bureau (ALSB) of the Department of Justice to conduct the contested case proceedings.
35. The average amount of time spent by ALSB personnel to conduct a contested case proceeding would be 30 attorney hours and 15 paralegal hours. The DEQ estimates a cost of \$12,330 per year for hearing examiner services.
36. Participation in contested case proceedings by agency attorneys and permitting personnel would be conducted by existing staff.

Department of Transportation (MDT)

37. MDT's rules implementation would be estimated to be a one-time cost of \$5,000.
38. Participation in contested case proceedings by agency attorneys and permitting personnel would be conducted by existing staff.

Department of Public Health and Human Services (DPHHS)***39. Management and Fair Hearings***

- a) The department currently has permitting, certification and licensing functions in the Child and Family Services Division; Addictive and Mental Disorders Division; Public Health and Safety Division; and the Quality Assurance Division for such functions as foster care, chemical dependency centers, childcare, community residential facilities and healthcare facilities.

- b) The permitting, licensing and certification of these entities and facilities are regulated by federal rules and regulations, state statute, and administrative rules and include an appeals process for any government action taken.
- c) The department estimates it would need the resources of 3.00 FTE to comply with the requirements of this bill for tracking and reporting the number and nature of complaints, producing, and disseminating upon request the specific qualitative or quantitative studies, reviews, or other analyses upon which the action is based, review of the written request for a hearing and additional informal dispute resolution hearings for contested case proceedings separate from and above the current appeals process allowed for in administrative rules governing the certification, permit, and licensing functions of the agency.
- d) These 3.00 FTE are estimated to cost \$78,503 each for salary and benefits, \$2,875 each for one-time new office setup and computer, and \$1,620 annually for network connectivity, phone and supplies for a total estimated cost of \$249,994.
- e) The estimated funding for these FTE is 42.58% general fund, .45% state special funds and 56.97% federal funds.

40. Technology Services Division

- f) A reporting mechanism would need to be developed to meet the requirements of this bill. For purposes of this fiscal note it is assumed that updates would be made to CCUBS (Child Care Under the Big Sky) and HFLS/VERSA (Health Facility Licensing Solution) to meet this requirement.
- g) It is estimated that the programming needed for CCUBS and HFLS/VERSA would be \$55,000. Ongoing maintenance would be handled under the current maintenance and operations activity.
- h) The estimated funding for this activity is a combination of 42.58% general funds, .45% state special funds and 56.97% federal funds.

Department of Agriculture (Ag)

- 41. HB 290 requires rule adoption. Adoption of the rules would require publication of a notice of proposed rulemaking and a notice of adoption in the Montana Administrative Register at an estimated cost \$1,000.
- 42. Review of existing rules to ensure they meet the requirements outlined in HB 290 could be conducted by existing staff.

Department of Revenue (DOR)

- 43. The Department of Revenue anticipates receiving written requests for qualitative and quantitative studies, reviews, or other analyses upon which DOR actions were based. Because of this, the DOR anticipates expending resources to provide the required information. At this time the amount of resources necessary is unclear.

Department of Commerce (DOC)

- 44. The fiscal impact of implementing the broad provisions contained in this bill are likely to be significant but cannot be accurately quantified by the Department of Commerce at this time.

Fish, Wildlife and Parks

- 45. This bill applies only to the denial or issuance with conditions of a permit, certificate, license, or the equivalent.
- 46. FWP's hunting and fishing licenses are not impacted by this law. (FWP sells only to those who want a license. If licenses are limited in number, there is no individual denial or issue.)
- 47. In a few minimal cases – i.e. private fish ponds, fish stocking permits – the law set forth in HB 290 will be followed and the agency would conduct the work with existing staff.

All Other Agencies

- 48. All other agencies have indicated the agency will assume responsibility of this bill within the agency utilizing existing personnel and resources. HB 290 should have no significant fiscal impact on those agencies.

Fiscal Impact:	FY 2016 Difference	FY 2017 Difference	FY 2018 Difference	FY 2019 Difference
FTE (DOA)	1.00	1.00	1.00	1.00
FTE (DNRC)	5.50	5.50	5.50	5.50
FTE (DPHHS)	3.00	3.00	3.00	3.00
FTE Total	<u>9.50</u>	<u>9.50</u>	<u>9.50</u>	<u>9.50</u>
Expenditures:				
Personal Services (DOA)	\$84,592	\$84,592	\$85,861	\$87,149
Operating Expenses (DOA)	\$8,900	\$6,000	\$6,090	\$6,181
Personal Services (DPHHS)	235,509	235,509	239,042	242,627
Operating Expenses (DPHHS)	\$68,485	\$4,860	\$4,933	\$5,007
Personal Services (DNRC)	\$417,934	\$417,934	\$424,203	\$430,566
Operating Expenses (DNRC)	\$40,175	\$20,300	\$20,605	\$20,914
Personal Services (Gov's Office)	\$15,000	\$15,000	\$15,000	\$15,000
Operating Expenses (Gov's Office)	\$15,000	\$10,000	\$10,000	\$10,000
Operating Expenses (DEQ)	\$12,330	\$12,330	\$12,515	\$12,703
Operating Expenses (MDT)	\$5,000	\$0	\$0	\$0
Operating Expenses (DOR & DOC)	unknown	unknown	unknown	unknown
Operating Expenses (Ag)	\$1,000	\$0	\$0	\$0
TOTAL Expenditures	<u>\$903,925</u>	<u>\$806,525</u>	<u>\$818,248</u>	<u>\$830,147</u>
Funding of Expenditures:				
General Fund (01)	\$611,784	\$568,745	\$572,750	\$576,755
State Special Revenue SSR (02)	\$1,368	\$1,082	\$1,098	\$1,114
Trust Admin Acct SSR (02)	\$177,410	\$171,788	\$174,365	\$176,980
Guarantee Acct SSR (02)	(\$153,314)	(\$148,367)	(\$150,652)	(\$152,911)
University Trusts Distributable (02)	\$0	\$0	\$0	\$0
Other Trust Distributable	\$0	\$0	\$0	\$0
Public Building Distributable	\$0	\$0	\$0	\$0
Federal Special Revenue (03)	\$173,185	\$136,938	\$138,992	\$141,077
Common Schls Perm Fund (09)	\$0	\$0	\$0	\$0
Other	\$93,492	\$90,592	\$91,951	\$93,330
TOTAL Funding of Exp.	<u>\$903,925</u>	<u>\$820,778</u>	<u>\$828,504</u>	<u>\$836,346</u>
Revenues:				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$0	\$0	\$0	\$0
Trust Admin Acct SSR (02)	\$177,410	\$171,788	\$174,365	\$176,980
Guarantee Acct SSR (02)	(\$153,314)	(\$148,367)	(\$150,652)	(\$152,911)
University Trusts Distributable (02)	(\$5,970)	(\$5,780)	(\$5,928)	(\$6,017)
Other Trust Distributable	(\$3,620)	(\$3,505)	(\$3,487)	(\$3,540)
Public Building Distributable	(\$6,437)	(\$6,234)	(\$6,277)	(\$6,371)
Federal Special Revenue (03)				
Common Schls Perm Fund (09)	(\$8,069)	(\$7,902)	(\$8,021)	(\$8,141)
Other (DOA)	\$0	\$0	\$0	\$0
TOTAL Revenues	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	(\$611,784)	(\$568,745)	(\$572,750)	(\$576,755)
State Special Revenue (02)	(\$1,368)	(\$1,082)	(\$1,098)	(\$1,114)
Trust Admin Acct SSR (02)	\$0	\$0	\$0	\$0
Guarantee Acct SSR (02)	\$0	\$0	\$0	\$0
University Trusts Distributable (02)	(\$5,970)	(\$5,780)	(\$5,928)	(\$6,017)
Other Trust Distributable	(\$3,620)	(\$3,505)	(\$3,487)	(\$3,540)
Public Building Distributable	(\$6,437)	(\$6,234)	(\$6,277)	(\$6,371)
Federal Special Revenue (03)	(\$173,185)	(\$136,938)	(\$138,992)	(\$141,077)
Common Schls Perm Fund (09)	(\$8,069)	(\$7,902)	(\$8,021)	(\$8,141)
Other (DOA)	(\$93,492)	(\$90,592)	(\$91,951)	(\$93,330)

Effect on County or Other Local Revenues or Expenditures:**Department of Natural Resources and Conservation**

1. The cost of providing quantitative and qualitative information on state and local government actions would impact conservation districts.
 - a. Conservation districts issue 310 permits and there is a cost per disputed 310 permit.
 - b. Conservation districts issue an average of 1,500 permits under the streambed and land preservation act each year.
 - c. The permits would have to be issued by the conservation districts. If there were disputes, the cost to resolve a dispute is estimated to be approximately \$6,000 per dispute.
2. There would be additional time and costs for other sectors of local governments but the impact cannot be determined.

Technical Notes:**Department of Natural Resources and Conservation*****Trust Land Management Division***

1. The Montana Environmental Policy Act currently provides the ability for a person to challenge government actions. A MEPA review references studies, reviews or analyses relied upon, describes how the applicable information applies to the proposed action, and documents the decision made by the agency. HB 290 provides an additional way to challenge a MEPA document and agency decisions. This bill would mean DNRC no longer had a MEPA exemption under MAPA.
2. The time period within which a government act is subject to challenge is not defined.
3. The Land Board possesses broad authority and discretion to establish what uses it wishes to allow on school trust land, consistent with its fiduciary duty to the trust beneficiaries. Board actions can be based on broad land management objectives, and not on a specific study, review, or analysis.

General Technical Notes

4. The term "person" is not defined. It is unclear whether person refers to the applicant for a government act, or also includes third parties.
5. Many permits, certificates, and licenses have a MAPA appeal process already built into the relevant statute for the agency action already. Examples include, but are not limited to: 85-2-309, 85-2-310, 85-2-314, MCA. There may be a conflict with the existing appeal processes in statutes relevant to the permit or license.
6. The title of HB 290 indicates that it applies to information used by state agencies. However, the text of the bill applies to "governmental entities" that take "governmental acts," as defined in 2-11-103, MCA. This includes actions by local government entities.
7. Section 3 of the bill provides for a hearing to contest studies, reviews or analyses used to grant or deny a permit. The bill does not identify whether the hearing is in place of or in addition to other hearings or dispute resolution processes provided to contest the issuance or denial of a permit.
8. The term "quantitative or qualitative basis" is not defined in the bill.

*Sponsor's Initials*_____
*Date*_____
*Budget Director's Initials*_____
Date